Electro-Tec, Inc. *and* Gary K. Ketola *and* International Brotherhood of Electrical Workers, Local Union No. 219, AFL–CIO. Cases 30–CA–11148, 30–CA–11148–2, 30–CA–11148–3, and 30–CA–11322

January 15, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

Exceptions filed to the judge's decision in this case[1] present the question, inter alia, whether the judge correctly decided that the Respondent violated Section 8(a)(1) and (3) by discriminatorily refusing to hire job applicants due to their union sympathies.

The Board has considered the exceptions in light of the record and briefs and has decided to affirm the judge's rulings, findings,[2] conclusions as modified,[3] and to adopt his recommended Order as modified.[4]

The judge found, and we agree, that the General Counsel established a prima facie showing that the Respondent violated Section 8(a)(3) and (1) by refusing to hire applicants because of their union sympathies and activities. We also agree with the judge's conclusion that the Respondent failed to establish that it would not have hired these applicants even in the absence of their union sympathies. In this regard, we note that the Respondent asserted as a defense before the judge that the applicants were organizers sent by the Union to apply for jobs rather than bona fide applicants. Even if the record had established that the applicants for employment with the Respondent were paid union organizers, they would nonetheless be bona fide applicants against whom the Respondent could not discriminate. See *Sunland Construction Co.*, 309 NLRB 1250 (1992).[5]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Electro-Tec, Inc., Iron Mountain, Michigan, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 1(b).

''(b) Interfering with, restraining, or coercing its job applicants or employees in the exercise of the rights guaranteed in Section 7 of the Act by interrogating them concerning their union sympathies and activities; by asking employees or applicants who may have filed charges with the National Labor Relations Board if they are considering dropping such charges; by issuing written warnings; and by denigrating an applicant or employee's abilities and paying less than promised or prevailing wages.''

2. Insert the following as paragraph 1(d) and reletter the subsequent paragraph.

''(d) Discharging or otherwise discriminating against employees or applicants because they have filed charges or given testimony under the National Labor Relations Act.''

3. Substitute the attached notice for that of the administrative law judge.

---

[1] On April 30, 1992, Administrative Law Judge Richard H. Beddow Jr. issued the attached decision. The Respondent filed exceptions and a supporting brief and the General Counsel filed a motion to strike the Respondent's brief and exhibits and, in the alternative, an answering brief. The General Counsel's motion to strike the Respondent's brief is denied. Although the brief does not conform exactly to Sec. 102.46(b) of the Board's Rules and Regulations, it is not so deficient as to warrant striking. The General Counsel's motion to strike the Respondent's exhibits, however, is granted, inasmuch as the exhibits consist of documents which were not admitted into evidence at the hearing and are not, therefore, part of the record in this proceeding. *Today's Man*, 263 NLRB 332, 333 (1982).

The Respondent's request for oral argument is denied as the record, exceptions, and briefs adequately present the issues and the positions of the parties.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

[2] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

In his Statement of the Case, the judge observes that the Respondent used profanity in its answer. However, the Respondent correctly notes that the judge allowed the Respondent to amend its answer by withdrawing such profanity, so as to remove it from the record. The judge's error does not affect his ultimate findings and conclusions.

[3] In his Conclusions of Law, the judge finds that the Respondent violated Sec. 8(a)(1), (3), and (4) of the Act by laying off employee Munn. We find it unnecessary to reach the 8(a)(4) finding with respect to Munn. In light of our adoption of the judge's 8(a)(4) finding with respect to employee Ketola, any such finding with respect to Munn would be cumulative. Furthermore, because we adopt the judge's 8(a)(3) finding regarding Munn, an 8(a)(4) finding would not affect the remedy for the Respondent's unfair labor practices involving Munn.

[4] In his discussion of the issues, the judge found that the Respondent violated Sec. 8(a)(1) of the Act by asking employee Ketola if he was considering dropping unfair labor practice charges filed against the Respondent with the Board. However, the judge failed to include this finding in his Order and notice. The judge also failed to include the 8(a)(4) violations in his notice. We have modified the Order and notice to correct these inadvertent errors.

[5] Member Raudabaugh notes that the record does not indicate that any of the applicants for employment with the Respondent were paid union organizers. He, therefore, finds it unnecessary to apply the analysis set forth in his concurrence in *Sunland Construction Co.*, supra.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
>
> To form, join, or assist any union
>
> To bargain collectively through representatives of their own choice
>
> To act together for other mutual aid or protection
>
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT terminate or lay off any employees, fail or refuse to recall them from layoff, or otherwise discriminate against them in retaliation for engaging in union activities or other protected concerted activities.

WE WILL NOT interfere with, restrain, or coerce our employees in the exercise of rights guaranteed in Section 7 of the Act by coercively interrogating job applicants or employees concerning their union sympathies and activities, or those of other employees; by asking employees or applicants who may have filed charges with the National Labor Relations Board if they are considering dropping such charges; by issuing written warnings; or by denigrating an applicant or employee's abilities and paying less than promised or prevailing wages.

WE WILL NOT discriminatorily fail and refuse to hire job applicants because of their union activities or sympathies.

WE WILL NOT discharge or otherwise discriminate against employees or applicants because they have filed charges or given testimony under the National Labor Relations Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer Grover Munn and Gary K. Ketola immediate and full reinstatement and make them whole for the losses they incurred as a result of the discrimination against them and expunge from our files any reference to the warning given to Munn and notify him in writing that this has been done and that evidence of the unlawful warning will not be used as a basis for future personnel action against him.

WE WILL offer John Blomquist, Dan Harger, and Jim Hoots preferential employment and make them whole, with interest, for any loss of earnings and other benefits resulting from our discriminatory hiring of other employees.

ELECTRO-TEC, INC.

Rocky L. Coe, Esq., for the General Counsel.
James Pouliot, of Iron Mountain, Michigan, appearing pro se, for the Respondent.

DECISION

STATEMENT OF THE CASE

RICHARD H. BEDDOW JR., Administrative Law Judge. This matter was heard in Kingsford, Michigan, on December 9 and 10, 1991. Subsequently, briefs were filed on the due day of February 14, 1992, by the General Counsel and by a pleading received February 18, 1992, but dated and postmarked February 5, 1992, by certified mail to the proper address by the Respondent. Respondent failed to serve any copies of its brief on either the General Counsel or the Union, however, it did send copies to an otherwise unidentified firm in Madison, Wisconsin, and to two offices of the Michigan attorney general. It also failed to file the required number of copies (two) with its original. In response to an inquiry from the chief judge, the appropriate copies were received on March 5, 1992. In addition to the copies of its brief, Respondent also enclosed (1) a copy of a late-filed appeal to the Board's General Counsel, Office of Appeals, which challenged the Board's failure to issue a complaint in Cases 30–CB–3366, 30–CC–503, and 30–CP–87 which it had filed against the Union (in relation to the matters arising out of the instant proceeding); (2) a photocopy of the General Counsel's brief on which it had highlighted certain portions and written various comments of its own between the line or in the margins; and (3) enclosed various documents referred to in the General Counsel's brief as relevant subpoenaed documents that it had failed to produce at the hearing in response to the General Counsel's subpoena.

Although the General Counsel had no way of knowing about the latter three items, it did learn that an original brief had been filed and by pleading dated March 6, 1992, moves to strike Respondent's brief because of Respondent's noncompliance with Section 102.42 of the Board's Rules and Regulations which provides that:

> three copies of the brief or proposed findings and conclusions shall be filed with the administrative law judge, and copies shall be served on the other parties, and a statement of such service shall be furnished.

The General Counsel argues that although Respondent is a layman and appeared pro se, that is no reason to allow his improperly filed brief and submits that this failure to serve General Counsel was not inadvertent or even negligent, but rather a continuation of Respondent's blatant disrespect and flaunting of the Board's processes.

In this regard, the record shows that Respondent used profanity in its answer to the complaint allegations that the court refused to accept without amendment. A similar profane abbreviation was used in a marginal note on the enclosure of its marked copy of the General Counsel's brief.

Otherwise, it is noted that the complaint in these proceedings specifically calls attention to the Board's Rules and Regulations and notifies Respondent that it shall serve copies on each of the other parties and that Respondent did in fact send its request for an extension of the brief date to the involved Regional Office, thereby indicating it was aware of how it could comply with the Rules.

By letter dated March 10, 1992, Respondent replied to the General Counsel's motion and urges that it be denied because it is a small electrical contractor lacking the time and resources required to be technically correct. The letter indicates that copies were sent to the General Counsel and to United States Senator Carl Levin of Michigan, however, no copy was served on the Charging Party.

Respondent's tendered brief is a short, three-page document that contains no discussion or disagreement with the General Counsel's' factual presentation and it contains no legal arguments or citations. It does contain the following passage:

> *What are our opinions concerning these charges!!*
>
> 1. It is not the right of an individual to organize and have representation which we are in disagreement with.
>
> It is the way a third party can ''use'' the individual to co-erce a non-union contractor into ''signing an agreement or else.'' We believe this to be dangerous to our free enterprise system and the democratic process.

Here, Respondent's brief not only fails to meet basic procedural requirement, but its contents also fail to present anything of value that would aid in the evaluation of the record and the applicable law. In substance, Respondent's brief essentially expands on its position that it disagrees with the statutory rights granted employees under the National Labor Relations Act because it interferes with its own exercise of ''free enterprise.''

Under the circumstances, good cause is shown that warrants a granting of the General Counsel's motion. The additional materials discussed above filed with Respondent's additional copies of its brief on March 5, 1992, are not properly part of the record and, accordingly, Respondent's tendered brief and all such materials tendered with it are hereby stricken from the record.

The proceeding is based on charges filed October 22 and 23, 1990, and February 6 and April 15, 1991,[1] as amended, by International Brotherhood of Electrical Workers Local Union No. 219, AFL–CIO. The Regional Director's complaints consolidated by Order dated July 11, 1991, alleges that the Respondent, Electro-Tec, Inc., Iron Mountain, Michigan, violated Section 8(a)(1) and (3) of the National Labor Relations Act by refusing to hire Gary Ketola for discriminatory reasons; by refusing to hire other qualified applicants because of their union sympathies or affiliation; by intimidating, coercing, and underpaying Gary Ketola because of his involvement in Board charges and testimony to the Board; and by laying off known union organizers Gary Ketola and Grover Munn and systematically failing to hire applicants Dan Harger, John Blomquist, and James Hoots because of suspected union sympathies.

[1] All following dates will be in 1990 unless otherwise indicated.

On a review of the entire record in this case and from my observation of the witnesses and their demeanor, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent is an electrical contractor in the upper Michigan area. It annually purchases and receives goods and materials valued in excess of $50,000 indirectly from points outside Michigan and I find that at all times material is, and has been, an employer engaged in operations affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

Respondent is a small electrical contractor co-owned by Douglas Edlund and James Pouliot, who acts as its principal spokesman. During 1991, it contracted for between 250 and 300 different jobs and it generally had between five and seven employees besides the owners who also worked in the field.

On June 8, 1989, the Union sent a letter to the Respondent noting that it had learned Respondent was bidding on a Veterans Administration Medical Center construction job and it advised Respondent that if the contract was awarded, the Union would seek to assure that Respondent complied with the prevailing wage provision of Public Act 166 of 1965. Thereafter, the Union also communicated with Respondent about the possibility of recognition but Respondent declined.

In January 1990, co-owner Edlund promised Gary Ketola a job with a starting wage of $6 per hour when work started at a new bank construction site. Unknown to Ketola, Edlund then investigated Ketola's work activity while he was employed at Dory Electric. Edlund was informed by Dory Electric that Ketola was a good worker but also learned that Ketola sympathized with and was involved in supporting the union. Thereafter, Edlund told Ketola what he had heard, told him he did not need that trouble and did not hire him, despite the earlier promise.

Grover Munn testified that on October 5, 1990, when he applied for a job, co-owner Pouliot told him that Respondent was having problems with the Union sending people over to put in applications and that if they caught anyone else he would like to kill them. Pouliot then asked Munn what he thought of the Union and blamed the Union for inflicting damage to a tire at the bank jobsite. Munn answered that the Union had both good and bad points and then was interviewed by Edlund who asked him if he worked for the Union. When he answered no, he was hired at $6.50 an hour.

On October 11, 1990, the Union addressed a letter to Respondent recommending John Blomquist for employment with an offer to assist in any additional training he might require and also noting that any union organization he might choose to engage in would be strictly within the law and would not interfere with his productivity.

Ketola testified that around October 18, 1990, Edlund told him ''they had work all along for me, but they got wind that I was in the union and he [Edlund] said no contractor needs that.'' Shortly after the October 18 conversation with Edlund, the charges were filed which contended that Respondent re-

fused to hire Ketola for unlawful reasons. Around October 26, Ketola began to leaflet Respondent at the jobsite, alleging that Respondent refused to hire him because of his union sympathies/activities.

On November 2, the Union sent Respondent a letter (received by Respondent on November 5) notifying it that Munn was going to be an organizer on the Union's behalf. In response, Edlund passed out a copy of the letter (which also mentioned John Blomquist, Ketola, and Daniel Harger as job applicants who had given testimony to a Board agent) to all of its employees. Munn began to wear a union hat, button, and jacket at work and he talked to employees about the Union while on break.

On November 7 or 8, 1990, Respondent gave Munn a written warning for attendance. However, neither Munn nor anyone else had previously been warned or apprised of any attendance problem or policy.

Pouliot testified it was their policy to give a verbal warning before any written discipline but this was not done with Munn, and Edlund admitted that even though other employees had been absent, Munn was the first person in 6 years to be disciplined by Respondent for absenteeism.

In late December 1990, Edlund told Munn ''that he might be losing his job because the union was pushing to get Gary Ketola on Respondent's payroll'' and asked ''why wasn't he upset about this.''

On January 16, 1991, even though there was still an estimated 2 weeks of work at the jobsite he was working on (not the jobsites Ketola subsequently was sent to), Munn was laid off and given a slip stating that it was for lack of work. Munn stopped in later at Respondent's office to ask about work and was told by Edlund that Respondent did not know what was going on with the Union and Gary Ketola and that ''every time he turned around they [the Board] was nailing him . . . so it was up in the air about any kind of work [for Munn].''

On January 21, 1991, Pouliot called Ketola to Respondent's office. First, Pouliot asked Ketola if he was thinking about dropping the charges; however, Ketola did not answer. He told Ketola that Munn was better and said that Ketola was worth only $4.50 per hour and that he did not understand why somebody would want to work there when they were not wanted. Pouliot asked him why he had to hire someone they did not want but then offered him a job at $5 per hour ($1 less than what Edlund had promised him in January 1990).

Ketola, who was unemployed, accepted and began to work for Respondent on February 4, 1991. He immediately began to wear a union pin (and was observed by Pouliot) and attempted to organize Respondent's employees as had Munn. Ketola abruptly was laid off at the end of the week on February 8 at 3:20 p.m. and was not allowed to finish pulling in 100 feet of work that remained and Edlund said he would do it himself. He did not work at the bank jobsite described below. After his layoff by Respondent, Ketola subsequently obtained work in the Green Bay, Wisconsin area as a ''white card'' journeyman electrician.

Just prior to Ketola's hiring, Respondent called another contractor, Dory Electric, and found that their employee Brian Hartwell was available (and Pouliot was aware of his qualifications). Respondent then hired Dory Electric as a subcontractor to supply one man at $16 an hour. Hartwell (who received about $11 an hour including benefits from Dory) worked with Mike Demko and one other employee at the First National Bank jobsite where Respondent was paying Demko about $11 an hour. Demko had started with Respondent in 1985 at about $5 an hour (he then had some schooling but no construction experience). Demko obtained additional training and experience, became a master electrician, and left Respondent shortly thereafter (in the spring of 1991) to become self-employed. Hartwell said he did ''wiring'' at the bank for 6 to 8 weeks, a job that involved ''just following the blueprints.''

In the spring of 1991, Blomquist called Pouliot and asked for work. Pouliot said he was not hiring but he could fill out an application.

Daniel Harger (on April 22, 1991) and James Hoots (on May 31, 1991), also filled out applications. Pouliot asked Blomquist how much he wanted and Blomquist said it was negotiable but he was never called by Respondent.

Pouliot has known Blomquist for years and although he reluctantly admitted Blomquist had told him he was a journeyman, he still denied that he ''knew'' Blomquist was qualified as a journeyman. Pouliot said he made no attempt to call Blomquist because he ''wouldn't'' hire him, nor did Respondent attempt to call Harger or Hoots (who both were journeymen) to replace Demko when he left, or for any other job opportunity.

III. DISCUSSION

The issues in these cases arose subsequent to Respondent's bid to participate in construction work at a federally funded veterans medical center and a June 1989 letter to it from the Union which addressed the subject of Respondent's compliance with the prevailing wage provision of Public Act 166 of 1965. Significantly, when the General Counsel asked co-owner Pouliot about this letter, Respondent initially said the letter did not concern wages but concerned harassment by the Union. There is little dispute that thereafter the Union and several union electricians made various contacts with the Respondent, both for the purpose of securing employment and for recognition of the Union, and that the Respondent consistently resisted these efforts, relenting once to hire alleged discriminatee Ketola for a week (in an apparent attempt to resolve the initial complaint in these proceedings), before abruptly letting him go. Otherwise, Respondent has refused to acknowledge the possibility that the laws of the United States, as codified in the National Labor Relations Act, give rights to individuals and labor unions that might supersede its personal opinions about how freely it can conduct its small business enterprise.

A.

It is well established that questions concerning union preference, in the context of job application interviews, are inherently coercive and unlawful even when the applicant is hired. *Thriftway Supermarkets*, 276 NLRB 1450, 1459–1460 (1985). Here, both co-owners Pouliot and Edlund told applicant Munn in his job interview on October 5, 1990, that they were having problems with the Union; that their tires had been slashed; that if they caught the union people, they would like to kill them; and asked Munn whether he worked for the Union and what he thought of the Union. This con-

duct is coercive and a violation of Section 8(a)(1) of the Act, as alleged.

In a telephone conversation with applicant Ketola on October 18, 1990, Edlund said that he was not hired because Respondent had learned of his being in the Union and that no contractor wanted that trouble. Also in October, Edlund told Ketola that he was not hired because they heard he was Union. Also, in late December, Edlund told Munn he might lose his job because the Union was pushing to get Ketola hired. Each of these actions interfere with employee Section 7 rights and constitutes violation of Section 8(a)(1) of the Act, as alleged.

When Ketola was interviewed by Pouliot, after his initial charge over not being hired was pending, he was asked if he was thinking of dropping the charges. I find that this question implies a request to do so in exchange for being hired, see *Norbar, Inc*., 267 NLRB 916, 917 (1983), and therefore interferes with employee rights and violates Section 8(a)(1) of the Act, as alleged.

In this same conversation, Respondent also denigrated and otherwise discouraged Ketola from taking the job by telling him that Munn was better, that he was worth only $4.50 per hour; and then offered him the job at $1 less per hour than he was offered the previous year. The denigration and discouragement, in the context of a hostile union environment, to a job applicant who sympathizes with the Union, also violates Section 8(a)(1) of the Act, as alleged. See *Precision Founders*, 278 NLRB 544, 549 (1986).

B.

Section 8(a)(3) of the Act makes it an unfair labor practice for an employer to discriminate against an employee in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization.'' Thus, an employer violates Section 8(a)(3) and (1) when it fails to hire, disciplines, or discharges employees because of their union sympathies or activities. In cases of this nature, applicable law requires that the General Counsel meet an initial burden of presenting sufficient evidence to support an inference that the employees' union or other protected, concerted activities were a motivating factor in the employer's decision affecting the employees. Here, the record shows that Respondent has clearly and unequivocally voiced its disagreement with the rights of individuals to organize and have collective representation and, as shown above, it has adhered to its thoughts in this respect and expressed its union animus in a manner that has violated the 8(a)(1) rights of individuals.

Under these circumstances, I find that General Counsel has met his initial burden by presenting a prima facie showing, sufficient to support an inference that the employees' union activities were a motivating factor in Respondent's decision regarding the hire, tenure, and discipline of employees.

Accordingly, the testimony will be discussed and the record evaluated in keeping with the criteria set forth in *Wright Line*, 251 NLRB 1083 (1980); see *NLRB v. Transportation Management Corp*., 462 U.S. 393 (1983), to consider Respondent's defense and, in the light thereof, whether the General Counsel has carried its overall burden.

Respondent's defense appears to be directed at its perception that it is being harassed because the Union in using salting techniques and sending union organizers to apply for jobs rather than bona fide applicants.

The Board's recent decision in *Windemuller Electric*, 306 NLRB 664 (1992), affirms the administrative law judge's following discourse on this precise subject:

> The Company contends [Br. 52] that ''the alleged discriminatees were not bonafide applicants for employment because of [the Company's] belief that they were paid union organizers.'' As I indicated at the hearing, I find this argument without merit as a matter of law. At the hearing, the Company and CES did not argue that they refused to hire or consider for employment any of the alleged discriminatees, or took personnel action against them, because of their actual or perceived status as union organizers. None of the Respondents' witnesses made such a contention. Rather, the Company argues in sum that by reason of their actual or perceived status as ''paid union organizers,'' the alleged discriminatees fell outside of the class of ''employees'' who are entitled to the protection of the Act. The argument is without merit. All union members are in a real sense, union organizers. This is the nature of labor organizers. They are members of the ''employee class,'' and therefore ''entitled to the Act's protection.'' *Oak Apparel, Inc*., 218 NLRB 701 (1975); see also, *Willmar Electric Service, Inc*., 303 NLRB No. 33, sl. op. at 4 (1991); *Pilliod of Mississippi, Inc*., 275 NLRB 799, 811 (1985); *Holbrook Knitwear, Inc*., 169 NLRB 768, 771 (1968). It is immaterial whether the alleged discriminatees sought employment with the Company or CES principally for organizational purposes or whether they received any reimbursement from the Union. Given the transient nature of employment in the construction industry, it would be difficult to engage in an organizational campaign without some preconceived plan. If persons who worked at the trade were denied protection of the Act because they sought employment for organizational purposes or accepted union reimbursement, this would serious [sic] impede organizational activity in the construction industry.

Under these circumstances, it is clear that the alleged discriminatees are entitled to the Act's protection against employment discrimination.

The record shows that Respondent refused to hire Ketola on October 8, 1990, because it was aware of his union activities at another company. The record also shows that Respondent refused to hire or consider for hire applicants Blomquist, Harger, and Hoots because of their believed association with the Union. Although the Respondent also asserts that these persons were not ''qualified'' to do the work involved, I find that the record otherwise has shown that they all were experienced in the trade and apparently were functional at the journeyman level. The Respondent demonstrates no objective basis for its claims that they were not ''qualified'' and I find that its reason is pretextual.

This conclusion is reinforced by Respondent's transparent action in dismissing both Munn and Ketola who were working at $6.50 and $5 an hour, respectively, and hiring a nonunion subcontractor's employee at $16 an hour.

Under the circumstances, I find that the Respondent refused to hire these several applicants because they joined, supported, or assisted the Union and engaged in concerted activities for the purpose of collective bargaining or other mutual aid or protection, and in order to discourage employees from engaging in those activities. By this conduct, Respondent discriminated in regard to the hire, tenure, terms or condition of employment of their employees, thereby discouraging membership in a labor organization, and I conclude that it is shown to have been engaging in unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act, as alleged.

The record show that work was available at Munn's jobsite, as well as on a new project and at the bank job when Respondent began to utilize the services of a more costly subcontractor's worker after laying off Munn, assertedly for lack of work. Shortly thereafter, Ketola was abruptly laid off after only 1 week of apparently ''token'' employment.

On this record, the Respondent has failed to show any legitimate reason for its actions that would outweigh the General Counsel's strong showing that its actions were discriminatorily motivated, including the fact that Ketola did not respond to Respondent's implication that he drop his charges against them, and I conclude that the Respondent is shown to have violated Section 8(a)(1) and (3) of the Act in this respect, as alleged.

C.

Munn was given a written warning for absenteeism on November 7, a week after being absent on October 29 and 3 days after the Respondent received the Union's letter identifying Munn as a union organizer.

Munn was the first employee in Respondent's 6-year history to receive a warning for absenteeism. He was not first given a verbal warning as Pouliot admitted was Respondent's policy. Also, there was no investigation into Munn's absence as had been done with other employees. No explanation was offered as to why over a week went by before the warning was issued. Munn is shown to have received disparate treatment, and otherwise there is no persuasive showing that the warning was given to Munn for nondiscriminatory reasons. Accordingly, I conclude that Respondent is shown to have violated Section 8(a)(3) of the Act in this respect, as alleged.

D.

Lastly, it is uncontradicted that Edlund promised Ketola a job at $6 per hour but then denied him employment because of his union sympathies and activities. The person who was hired instead of Ketola was paid $6.50 per hour. Later, when Ketola was hired on February 4, 1991, after he had filed charges with the Board alleging Respondent's discriminatory refusal to hire, Respondent denigrated Ketola by telling him he was worth only $4.50 and reducing his starting wages to $5 from the promised $6 an hour. Thus denigration of Ketola took place in a job interview January 21, 1991, in which Pouliot became even more disparaging after Ketola refused to answer as to whether he would withdraw his NLRB charges. Ketola subsequently obtained other work at a journeyman's level, and there is no showing by Respondent that explains or justifies its actions in this regard. Accordingly, I find that Respondent's solicitation of Ketola to drop his charges together with the discriminatory assignment of Ketola to a lower pay rate are shown to be due to his union activity and his filing of charges with the Board and therefore in violation of Section 8(a)(1), (3), and (4) of the Act, as alleged; see *Consumer's Asphalt Co*., 295 NLRB 749 (1989), and *Grady Delling*, 287 NLRB 234 (1987).

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. By interrogating job applicants concerning their union sympathies and activities and by telling an applicant he was not hired because of his union activities and sympathies and telling an employee he might lose his job because the Union was pushing the cause of another person, Respondent has interfered with, restrained, and coerced employees in the exercise of their rights guaranteed them by Section 7 of the Act, and thereby has engaged in unfair labor practices in violation of Section 8(a)(1) of the Act.

4. By discriminatorily failing and refusing to hire applicants Gary K. Ketola, John Blomquist, Dan Harger, and Jim Hoots, Respondent engaged in unfair labor practices in violation of Section 8(a)(1) and (3) of the Act.

5. By denigrating applicant Ketola's ability during a job interview, paying him less than prevailing and promised wages because of his union sympathies and activities and because of his involvement in the filing of charges with the Board, Respondent has engaged in discriminatory and unfair labor practices in violation of Section 8(a)(1), (3), and (4) of the Act.

6. By issuing a written warning to employee Grover Munn on November 6, 1990, Respondent violated Section 8(a)(1) and (3) of the Act.

7. By laying off employees Grover Munn on January 16, 1991, and Gary K. Ketola on February 8, 1991, and failing and refusing to recall these employees since that time because of their union sympathies and activities, Respondent has violated Section 8(a)(1), (3), and (4) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find it necessary to order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

With respect to the necessary affirmative action, it is recommended that Respondent be ordered to offer John Blomquist, Dan Harger, and Jim Hoots preferential employment and make them whole, with interest, for any loss of earnings and other benefits resulting from Respondent's hiring of other employees as specified below, and to reinstate employees Grover Munn and Gary K. Ketola who were laid off January 16, 1991, and February 8, 1991, respectively, and not subsequently rehired, to their former jobs or substantially equivalent positions, dismissing, if necessary, any temporary employees or employees hired subsequently, without prejudice to their seniority or other rights and privileges previously enjoyed, and make them whole for any loss of earnings they may have suffered because of the discrimination practiced against them by payment to them of a sum of money equal to that which they normally would have earned

from the date of the discrimination to the date or reinstatement in accordance with the method set forth in *F. W. Woolworth Co*., 90 NLRB 289 (1950), with interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The Respondent shall also be ordered to expunge from its files any reference to the illegal warning given Grover Munn and notify him in writing that this has been done and that evidence of the unlawful warning will not be used as a basis for future personnel action against him. Respondent also shall make Ketola whole for the difference between the promised wage of $6 an hour and that actually paid during the week he worked. Otherwise, it is not considered necessary to issue a broad order.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[2]

ORDER

The Respondent, Electro-Tec, Inc., Iron Mountain, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Terminating or laying off any employees, failing or refusing to recall them from layoff or otherwise discriminating against them in retaliation for engaging in union activities or other protected concerted activities.

(b) Interfering with, restraining, or coercing its job applicants or employees in the exercise of the rights guaranteed in Section 7 of the Act by interrogating them concerning their union sympathies and activities; by stating that an applicant was not hired because of his union sympathies and activities and an employee might lose his job because of the Union's actions on behalf of another person; by issuing written warnings; and by denigrating an applicant or employee's abilities and paying less than promised or prevailing wages.

(c) Discriminatorily failing and refusing to hire job applicants because of their union activities or sympathies.

(d) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer Grover Munn and Gary K. Ketola immediate and full reinstatement and make them whole for the losses they incurred as a result of the discrimination against them in the manner specified in the remedy section, and expunge from its files any reference to the warning given to Munn and notify him in writing that this has been done and that evidence of the unlawful warning will not be used as a basis for future personnel actions against him.

(b) Offer John Blomquist, Dan Harger, and Jim Hoots preferential employment and make them whole, with interest, for any loss of earnings and other benefits resulting from Respondent's hiring of other employees as specified in the remedy section, above.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all records, reports, and other documents necessary to analyze the amount of backpay due under the terms of this decision.

(d) Post at its Iron Mountain, Michigan facility and mail to all job applicants and employees who were laid off on January 16 and February 6, 1991, copies of the attached notice marked ''Appendix.''[3] Copies of the notice, on forms provided by the Regional Director for Region 30, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

---

[2] If no exceptions are filed as provided by Sec. l02.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. l02.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''